

SECOND SUPPLEMENTAL SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

## I. EXECUTIVE SUMMARY

Date of Incident:	January 12, 2010
Time of Incident:	4:39 a.m.
Location of Incident:	██████████ Chicago IL, 60655
Date of COPA Notification:	January 12, 2010
Time of COPA Notification:	9:23 a.m.

This investigation originated on January 12, 2010, after Chicago Police Officers responded to Officer ██████████ residence for a call of a person shot. When first responders arrived they found ██████████ Jr. (██████████) unresponsive with an apparent gunshot wound to the left rear side of his head. Officer ██████████ was intoxicated, belligerent and violent, and was arrested on scene after he interfered with paramedics' efforts to treat ██████████ and assaulted a Chicago Police Department (CPD) sergeant. ██████████ was in a coma for months following the incident and was unable to speak for years after his coma ended. Officer ██████████ told CPD detectives and IPRA investigators that ██████████ shot himself using Officer ██████████ weapon. No other witnesses were present when ██████████ was shot. The initial investigation closed at IPRA on July 26, 2012. IPRA sustained allegations that Officer ██████████ was intoxicated while off duty, failed to secure his weapon, assaulted Sergeant ██████████ verbally abused Sergeant ██████████ in that he directed profanity at her and referred to her with a derogatory term, and brought discredit on the Department when he interfered with Chicago Fire Department personnel that were attempting to treat ██████████ and as a result he was subsequently arrested. IPRA did not sustain allegations regarding shooting ██████████ and giving false statements regarding the incident.<sup>2</sup>

In January 2017, IPRA learned of the ██████████ family's lawsuit against the City of Chicago and Officer ██████████ regarding the incident. Additionally, IPRA learned that after occupational and physical therapy ██████████ had regained the ability to speak and remembered the incident. IPRA requested authorization from CPD Superintendent Johnson to re-open the investigation. On January 27, 2017, pursuant to section 6.1, subsection (D) of the applicable collective bargaining agreement, CPD authorized IPRA to re-open the investigation. IPRA, and later COPA, reevaluated the case, obtained additional evidence from the civil lawsuit, and interviewed ██████████ On

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>2</sup> The contents and findings of IPRA's July 26, 2012 summary report in Log 1033096 are incorporated by reference and will not be reproduced in this second supplemental report. As no evidence was brought to light in the course of the civil case that discredited any of the witnesses interviewed during IPRA's original investigation, COPA has not re-opened an investigation into the sustained allegations from the initial summary report.

September 20, 2018, COPA sustained the two allegations that had previously been not sustained: that Officer █████ shot █████ and gave false statements regarding the incident.<sup>3</sup>

During the Command Channel Review Process, Police Superintendent Eddie Johnson requested additional investigation into the notice of allegations to provide Officer █████ an additional opportunity to respond to the allegations against him. COPA served Officer █████ with new Rule 14 allegations to provide him with notice of the specific false statements he is alleged to have made<sup>4</sup> and served him with an allegation that he discharged his weapon towards █████ without justification. Officer █████ gave a statement to COPA in response to these allegations.

This second supplemental summary report does not repeat information contained in the original summary and supplementary reports, but only includes Officer █████ response to the additional allegations brought against him.

## II. INVOLVED PARTIES

Involved Officer #1:	█████ star # █████ employee ID # █████ DOA: █████ █████ 2004, Police Officer, Unit of Assignment: █████ DOB: █████ █████ male, white
Involved Individual #1:	█████ Jr., DOB: █████ male, white

## III. ALLEGATIONS

Officer	Allegation	Finding
Officer █████	8. It is alleged that on January 11, 2011, Officer █████ willfully made a material false statement to the Independent Police Review Authority when he made the following statements: P.O. █████ "Um and immediately I turned around um, when I turned around he was standin' there facing into the bedroom and he had the gun, my gun to, to his temple." █████ "Okay" P.O. █████ "He had it in his left hand" █████ "Okay, and so he had it to the left side of his head?" P.O. █████ "Correct" (Att. 172, Page 24, Lines 10-20).	Sustained
	9. It is alleged that on January 11, 2011, Officer █████ willfully made a material false statement to the Independent Police Review Authority when he made the following statements: P.O. █████ "So I went to grab it, well with my right	Sustained

<sup>3</sup> The contents and findings of COPA's September 20, 2018 supplementary summary report in Log 1033096 are incorporated by reference and will not be reproduced in this second supplemental report.

<sup>4</sup> Rules and Regulations of the Chicago Police Department, Rule 14 prohibits officers from "making a false report, written or oral."

hand um and I don't remember hitting the gun or even making contact with him. And I mean I could have I don't remember. I just remember reaching for the gun and boom I heard it go off. Um, right when it went off I saw the gun kinda go up. Um his face went blank, like expressionless. I remember like he wasn't laughing anymore." (Att. 172, Page 27, Lines 14-21).

10. It is alleged that on January 11, 2011, Officer [REDACTED] willfully made a material false statement to the Independent Police Review Authority when he made the following statements: [REDACTED] "Okay, um, did you shoot [REDACTED] P.O. [REDACTED] "No." (Att. 172, Page 39, Lines 30-31).

Sustained

11. It is alleged that on January 12, 2010, at approximately 4:30 a.m., at or near [REDACTED] Chicago, Illinois 60655, Officer [REDACTED] discharged his firearm in the direction of [REDACTED] Jr. without justification.

Sustained

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

Rule 2: Prohibits any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty

Rule 9: Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 14: Prohibits making a false report, written or oral.

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**INVESTIGATION<sup>5</sup>****a. Testimony from new witness interview****1. Accused Officer [REDACTED]**

In an interview with COPA on March 1, 2019, **Officer [REDACTED]** stated that he stood by his previous IPRA statement that he made on January 11, 2011, and all the information he provided in that statement was truthful. Officer [REDACTED] denied discharging his firearm in the direction of [REDACTED] Jr.

**V. LEGAL STANDARD****a. There are four potential findings COPA can make regarding allegations.**

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed did not comply with Department policy.<sup>7</sup> If the evidence gathered in an investigation establishes that it is more likely that the conduct violated Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense.<sup>8</sup> Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true."<sup>9</sup>

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<sup>5</sup> COPA conducted a thorough and complete investigation. The following is a summary of new material evidence gathered and relied upon in our analysis.

<sup>6</sup> Attachments 243 (audio file) and 244 (transcript).

<sup>7</sup> See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).

<sup>8</sup> See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>9</sup> *Id.* at ¶ 28.

- b. The Rules and Regulations of the Chicago Police Department apply to on duty and off duty conduct and govern an CPD member's obligations to provide truthful reports.**

Officer [REDACTED] allegedly discharged his firearm in the direction of [REDACTED] Jr. without justification, in violation of Rules 2, 8, and 9 of the Rules and Regulations of the Chicago Police Department. Rules 8 and 9 together "prohibit the use of any excessive force by any member. These rules prohibit all brutality, and physical or verbal maltreatment of any citizen while on or off duty, including any unjustified altercation of any kind."<sup>10, 11</sup> Rule 2 "applies to both the professional and private conduct of all members" and applies to not only all unlawful acts, but all acts which would degrade or bring disrespect upon the member or the Department.<sup>12</sup> Further, it is alleged that Officer [REDACTED] knowingly made false statements regarding the incident in violation of Rule 14, which prohibits "making a false report, written or oral." For a false statement to violate Rule 14, the accused officer must make a knowingly false statement about a material fact.

## **VI. ANALYSIS<sup>13</sup>**

- a. Allegation 11 – Officer [REDACTED] discharged his firearm in the direction of [REDACTED] Jr.**

Based on a review of the available evidence, it is more probably true than not that Officer [REDACTED] shot [REDACTED] Jr., without justification on January 12, 2010, in violation of the Chicago Police Department's Rules and Regulations. As discussed below, while [REDACTED] Jr.'s condition post-injury has affected his memory about the moments leading up to the shooting, COPA finds his testimony about not being suicidal to be credible. Officer [REDACTED] multiple objectively false statements about the events of the night coupled with his intoxication make him not credible. Moreover, the physical evidence and testimony regarding various circumstances surrounding the shooting contradict Officer [REDACTED] version of events sufficiently enough to support a sustained finding by a preponderance of the evidence. The following findings of fact support this conclusion.

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<sup>10</sup> Official Comment to Rule 9, Rules and Regulations of the Chicago Police Department (as of April 1, 2010)

<sup>11</sup> The [REDACTED] family filed a lawsuit alleging that Officer [REDACTED] and the City of Chicago violated [REDACTED] Fourth Amendment rights. However, COPA does not need to reach a conclusion as to whether Officer [REDACTED] was attempting to act in his official capacity when and if he shot Mr. [REDACTED] as Rules 8 and 9 apply equally to off-duty misconduct as they do to on-duty misconduct. (See the September 20, 2018 Supplementary Summary Report for more details about the lawsuit.)

<sup>12</sup> Official Comment to Rule 2, Rules and Regulations of the Chicago Police Department.

<sup>13</sup> While this Second Supplementary Summary Report of Investigation does not re-state all of the evidence contained in the original Summary Report of Investigation, and the Supplementary Summary Report of Investigation dated September 20, 2018, the analysis, by necessity, takes all of that evidence into consideration when reaching the following conclusions. This analysis should not be interpreted as relying on the evidence contained in the investigative section of this document alone.

1. There are issues affecting the reliability of both [REDACTED] and Officer [REDACTED]

[REDACTED] regained his ability to speak and began reporting memories of the night in question at least three years after the incident. While he has maintained that he did not see Officer [REDACTED] with a gun he also stated he flinched just prior to hearing the gun go off. Based on the severe nature of the traumatic brain injury [REDACTED] sustained, it is difficult to give much weight to his version of events that led up to the shooting. Most troubling, however, is how often [REDACTED] mixes his version of events with facts he learned after he was shot. For example, he has testified about multiple events that occurred while he was unconscious: the results of Officer [REDACTED] blood alcohol content test; that Officer [REDACTED] assaulted a sergeant;<sup>14</sup> and that the first cartridge did not discharge from the gun due to the Sig Sauer's out-of-battery feature. As Dr. [REDACTED] explained, individuals who have endured the type of trauma [REDACTED] suffered are susceptible to misattribution and suggestibility. [REDACTED] statements at deposition and to COPA are consistent with Dr. [REDACTED] explanation. Undoubtedly, people talked about facts of the case and hypothesized about what happened in [REDACTED] presence. To this day, [REDACTED] has confusion about where he learned some of the information about what occurred. In every statement that [REDACTED] has given, there are pieces of information throughout indicating his testimony about what occurred on January 12, 2010, are not his memories, but things he must have learned since then.

There is objective evidence that both parties were intoxicated at the time of the shooting. The medical records from [REDACTED] Hospital reflect that [REDACTED] BAC at 5:00 a.m. was .155.<sup>15</sup> His cousin [REDACTED] also described [REDACTED] as being intoxicated when they left [REDACTED].<sup>16</sup> Officer [REDACTED] BAC was .093 when the breathalyzer was administered nearly 7 hours after the shooting.<sup>17</sup> A back extrapolation by Dr. [REDACTED] determined his BAC at the time of the shooting to be between .169 and .246.<sup>18 19</sup> Therefore, each party's recollection of the events would likely have been influenced by their respective levels of intoxication.

Additionally, COPA found that Officer [REDACTED] provided false statements about other parts of the incident under investigative log number 1087256. In sum, Officer [REDACTED] false statements to investigators and in the civil proceedings, the physical evidence (discussed below) COPA finds Officer [REDACTED] statements about what happened at the time of the shooting not credible.

2. [REDACTED] was not suicidal during the early morning hours of January 12, 2010.

<sup>14</sup> [REDACTED] testimony during deposition was that Officer [REDACTED] "hit a Lieutenant in the face." (Attachment 206, p. 81:2-3). As there is no record of Officer [REDACTED] punching anyone in the face and no record of a lieutenant being attacked, we assume Mr. [REDACTED] was referencing Officer [REDACTED] aggressive conduct towards Sergeant [REDACTED] after the shooting, which is thoroughly detailed in the initial summary report filed in this log number. This further illustrates Mr. [REDACTED] confusion about the events of the night in question.

<sup>15</sup> See Attachment 162

<sup>16</sup> Attachments 30, 63.

<sup>17</sup> Attachments 44, 53

<sup>18</sup> Attachment 60.

<sup>19</sup> "At blood alcohol concentrations of greater than 250 mg% (250 mg% = 250 mg/dl = 2.5 g/L = 0.250%), the patient is usually at risk of coma. Children and alcohol-naïve adults may experience severe toxicity at blood alcohol concentrations less than 100 mg%." B Adinoff, GH Bone, M Linnoila, *Acute ethanol poisoning and the ethanol withdrawal syndrome*, Medical Toxicology and Adverse Drug Experience, May-June 1988, at 172.

COPA finds [REDACTED] testimony about not being suicidal credible. [REDACTED] reported in multiple forums, including to COPA, that he has always been a happy person. In fact, he stated convincingly that even in his current condition, he continues to be a happy person with no desire to end his life. Additionally, his former girlfriend, [REDACTED] (formerly [REDACTED]) testified that [REDACTED] never discussed being suicidal with her, and she never thought he seemed suicidal. CPD Detectives' Reports indicate [REDACTED] [REDACTED] heard [REDACTED] make comments about ending his life, [REDACTED] testified at deposition that he never made those statements to detectives and further, did not believe [REDACTED] was suicidal.<sup>20</sup> The only person to maintain that [REDACTED] was suicidal that morning is Officer [REDACTED] himself. There has been no corroborating evidence discovered to support Officer [REDACTED] statements. For reasons stated both above and below this section, we do not find Officer [REDACTED] to be reliable as to this issue.

3. The gunshot wound suffered by [REDACTED] was not self-inflicted.

The physical evidence in this case is generally inconclusive with respect to who fired the round, however the evidence established several facts. First, it should be noted that the investigation was not treated as a homicide from the outset and because [REDACTED] was still alive, life saving measures took precedent over maintaining evidence. In sum, experts agreed that the shot was a close contact wound based on skull fragments found inside the residence. Additionally, the CT scans show the bullet moved from left to right. However, while three experts opined that the wound could not be self-inflicted, several experts opined that the evidence is inconclusive as to who took the shot. The experts did agree that it would be nearly impossible to fire the weapon with the right hand. Finally, based on his blood spatter analysis, Dr. [REDACTED] concluded that [REDACTED] was not facing into the bedroom as described by Officer [REDACTED]

4. [REDACTED] used his right hand to shoot firearms.

The uncontested testimony is that with the exceptions of eating and writing, [REDACTED] was right-handed for everything else, specifically shooting weapons. [REDACTED] had been shooting handguns and shotguns for over a decade by January 12, 2010, and went hunting multiple times a year. Officer [REDACTED] testified that [REDACTED] would show him shotguns that he had purchased for hunting. [REDACTED] Jr regularly kept the family's pistol. Additionally, [REDACTED] Sr. and [REDACTED] all maintain that [REDACTED] shot all firearms right-handed. There has been no evidence, other than Officer [REDACTED] version of the events to imply [REDACTED] ever fired a firearm with his left hand. Moreover, the physical evidence suggests it would be nearly impossible for [REDACTED] to use his right hand to shoot himself that night. Dr. [REDACTED] testified it would not be possible for [REDACTED] to shoot the gun with his right hand and achieve the trajectory consistent with the physical evidence. COPA does not find it convincing that the shooting occurred the way Officer [REDACTED] described: where [REDACTED] walked into Officer [REDACTED] bedroom without provocation, grabbed Officer [REDACTED] service weapon with his non-dominant hand, walked out to Officer [REDACTED] living room and used his non-dominant hand to shoot himself in the head. Due to

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<sup>20</sup> The only reference to the possibility of [REDACTED] being suicidal came from Chicago Police Department detectives' supplemental reports. These reports claimed to reference interviews with [REDACTED] and [REDACTED] (nee [REDACTED]) to support this theory. However, the content of those interview summaries were directly contradicted by those same witnesses' depositions.



the location and angle of the gunshot wound, for it to even be remotely possible for this wound to be self-inflicted, ██████ would have had to use his left hand to accomplish holding this gun and pulling the trigger. These facts lead COPA to conclude that it is more probably true than not that ██████ gunshot wound was not self-inflicted.

In sum, COPA finds by a preponderance of the evidence that Officer ██████ discharged his firearm in the direction of ██████ Jr. without justification. First, Officer ██████ is not credible based on his intoxication at the time of the incident, the physical evidence and the numerous inconsistent statements he made to investigators and at deposition. In contrast to Officer ██████ account, COPA finds sufficient evidence that ██████ was not suicidal. The physical evidence significantly contradicts Officer ██████ version of events. Specifically, the blood spatter showed that at the time of the shot ██████ was not facing into the bedroom. Additionally, experts agree it would be nearly impossible to fire the gun with the right hand, and ██████ was a known right-hand shooter.

**b. Allegations 8 through 10 – Officer ██████ willfully made material and false statements to the Independent Police Review Authority regarding this incident when he stated that ██████ Jr. shot himself.**

1. Allegation 8. It is alleged that on January 11, 2011, Officer ██████ willfully made a material false statement to the Independent Police Review Authority when he made the following statements: P.O. ██████ "Um and immediately I turned around um, when I turned around he was standin' there facing into the bedroom and he had the gun, my gun to, to his temple." ██████ "Okay" P.O. ██████ "He had it in his left hand" ██████ "Okay, and so he had it to the left side of his head?" P.O. ██████ "Correct" (Att. 172, Page 24, Lines 10-20).

As stated above, COPA found based on ██████ right-handedness, expert testimony during the civil trial, and ██████ statement that he did not shoot himself, COPA finds it more probably true than not that ██████ did not handle Officer ██████ handgun on the night of the incident. As stated above, for a false statement to violate Rule 14, the accused officer must know that the statement is false at the time he or she makes it and it must be about a material fact of the investigation. Clearly whether Officer ██████ observed ██████ shot himself is material to CPD's and then-IPRA's investigations. Based on the analysis in the previous section, COPA has determined it is more probably true than not that ██████ did not shoot himself. It is unclear if Officer ██████ whose severe intoxication has been documented and discussed in other reports related to this investigation, knows what happened that night. However, if that were the case, he had an obligation to tell investigators that he could not remember what happened due to his impairment. Based on a preponderance of the evidence, either Officer ██████ does know what happened and has made multiple false statements regarding the events, or he does not recall what happened and has falsely claimed that he does. Either way, Allegation 8 is **sustained**.

2. Allegation 9. It is alleged that on January 11, 2011, Officer ██████ willfully made a material false statement to the Independent Police Review Authority when he made the following statements: P.O. ██████ "So I went to grab it, well with my right hand um and I don't remember hitting the gun or even making contact with him. And I mean I could have I don't remember. I just remember reaching for the gun and boom



I heard it go off. Um, right when it went off I saw the gun kinda go up. Um his face went blank, like expressionless. I remember like he wasn't laughing anymore." (Att. 172, Page 27, Lines 14-21).

The analysis for Allegation 8 applies to Allegation 9, and the allegation is **sustained**.

3. Allegation 10. It is alleged that on January 11, 2011, Officer [REDACTED] willfully made a material false statement to the Independent Police Review Authority when he made the following statements: [REDACTED] "Okay, um, did you shoot [REDACTED] P.O. [REDACTED] "No." (Att. 172, Page 39, Lines 30-31).

The analysis for Allegation 8 applies to Allegation 10, and the allegation is **sustained**.

## **VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

### **a. Officer [REDACTED]**

#### **1. Complimentary and Disciplinary History**

COPA has taken into account the Complimentary and Disciplinary History of Officer [REDACTED]

#### **2. Recommended Penalty, by Allegation**

##### **A. Allegation No. 8**

Based on the egregious nature of the allegation, COPA recommends that Officer [REDACTED] be separated from the Chicago Police Department.

##### **B. Allegation No. 9**

Based on the egregious nature of the allegation, COPA recommends that Officer [REDACTED] be separated from the Chicago Police Department.

##### **C. Allegation No. 10**

Based on the egregious nature of the allegation, COPA recommends that Officer [REDACTED] be separated from the Chicago Police Department.

##### **D. Allegation No. 11**

Based on the egregious nature of the allegation, COPA recommends that Officer [REDACTED] be separated from the Chicago Police Department.

## VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer [REDACTED]	<p>8. It is alleged that on January 11, 2011, Officer [REDACTED] willfully made a material false statement to the Independent Police Review Authority when he made the following statements: P.O. [REDACTED] "Um and immediately I turned around um, when I turned around he was standin' there facing into the bedroom and he had the gun, my gun to, to his temple." [REDACTED] "Okay" P.O. [REDACTED] "He had it in his left hand" [REDACTED] "Okay, and so he had it to the left side of his head?" P.O. [REDACTED] "Correct" (Att. 172, Page 24, Lines 10-20).</p> <p>9. It is alleged that on January 11, 2011, Officer [REDACTED] willfully made a material false statement to the Independent Police Review Authority when he made the following statements: P.O. [REDACTED] "So I went to grab it, well with my right hand um and I don't remember hitting the gun or even making contact with him. And I mean I could have I don't remember. I just remember reaching for the gun and boom I heard it go off. Um, right when it went off I saw the gun kinda go up. Um his face went blank, like expressionless. I remember like he wasn't laughing anymore." (Att. 172, Page 27, Lines 14-21).</p>	<p>Sustained</p> <p>Sustained</p>
	<p>10. It is alleged that on January 11, 2011, Officer [REDACTED] willfully made a material false statement to the Independent Police Review Authority when he made the following statements: [REDACTED] "Okay, um, did you shoot [REDACTED] P.O. [REDACTED] "No." (Att. 172, Page 39, Lines 30-31).</p>	Sustained
	<p>11. It is alleged that on January 12, 2010, at approximately 4:30 a.m., at or near [REDACTED] Chicago, Illinois 60655, Officer [REDACTED] discharged his firearm in the</p>	Sustained

	direction of [REDACTED] Jr. without justification.	
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Approved:

[REDACTED]

June 28, 2019

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Sydney Roberts  
*Chief Administrator*

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Date

Appendix A

Assigned Investigative Staff

<b>Squad#:</b>	
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	